nature of the business, and on the time which ordinarily might be expected to elapse, in the usual course of business before the shipper or the consignee, with ordinary diligence, would be in a position to make a demand on the defendant. If, applying these considerations, the time within which the notice was to be given was reasonable, it would furnish no excuse that in a particular instance it proved insufficient."

It would seem, however, that with the gradual standardization of the bills of lading and other forms of contract used between shipper and carrier, the state courts would conform closely with the decisions of the Interstate Commerce Commission and the Supreme Court in deciding those cases where the Carmack Amendment has not denied them jurisdiction.

H. D. S.

CORPORATIONS—*Ultra Vires*—POWER TO LEND MONEY—The term *ultra vires* as to acts of a corporation or acts purporting to have been done by it, has been loosely used in several senses.[1] Sometimes an act is said to be *ultra vires* with reference to the rights of certain persons when the corporation can not legally act without their consent, and it may be held *ultra vires* with reference to some specific purpose when the corporation can not perform it for the purpose. It is said that in these two cases the right of the corporation to avail itself of the defence will depend upon the circumstances of the case,[2] but the courts by resorting to the doctrine of estoppel have held the corporation which has received the benefits of a transaction to be precluded from setting up the defence in so many instances as practically to make the doctrine a mere nullity.[3] A recent Georgia decision[4] exemplifies this class of case. There a statute provided that notice of stockholders' meeting for the purpose of issuing bonds should be published in some newspaper in the town or city where the principal office was located, once a week for four weeks prior to said meeting, and that stockholders should be duly notified. The court held that even though statutory notice of meeting was not given and one or possibly two persons holding but one share of stock were not present at the meeting, the company would be estopped, as to innocent purchasers for value, from setting up the defence that the bond issue was void, all the statutory requisites being set forth on the face of the bonds. It is patent that this act was one which the

[1] Miner's Ditch v. Zellerbach, 37 Cal. 543 (1869).

[2] Georgia Granite Co. v. Miller, 87 S. E. 897 (Ga. 1916).

[3] Western & Southern Fire Ins. Co. v. Murphy, 156 Pacific 885 (Okla. 1916).

[4] Georgia Granite v. Miller, *supra* (note 2).

legislature expressly authorized it to do, rather than an act *beyond its* powers, the only matter sought to be taken advantage of, being an irregularity in the exercise of the granted powers. Thus, where a corporation gave notes for the purchase of stock from its president, in consideration of his resignation, the court, though holding that the purchase was authorized by statute, said that even if there had been a lack of consent of the stockholders, since the payee could not be restored to *statu quo,* stock being reissued to the new president and par value of stock reduced, the corporation benefited by the deal was estopped to set up the defence of *ultra vires*.[5] The United States Supreme Court has clearly laid down the rule that a corporation may be estopped to set up an irregularity in the exercise of its granted powers in a case where the board of directors of a railroad corporation had power upon the petition of a majority of its stockholders to direct a guaranty of negotiable bonds of another corporation. Such negotiable guaranty executed by directors without assent of stockholders, was held valid in the hands of *bona fide* purchasers for value.[6] The court pointed out that there was a distinction between the doing of an act beyond the scope of powers granted to it by law, and an irregularity in the exercise of the granted powers.

In the primary sense of the term, an act *ultra vires* is an act beyond the chartered powers of the corporation, express or implied;[7] and since the act is outside the purposes of its creation and consequently beyond powers bestowed upon it by the legislature, it is a void act, and no action can be maintained thereon by either party against the other.[8] This was the view taken by a recent Illinois case in which a concern was incorporated to construct a canal and maintain docks, piers, *etc.,* possessing the power to purchase and sell real estate and to "employ it in such manner as it should determine." It sold a lot to one Conkling, at the same time loaning him a sum of money, taking a trust deed to secure payment for the lot and loan. In a foreclosure bill against the borrower's trustee in bankruptcy, the defence of *ultra vires* prevailed as to the money loaned, the court holding that since the company had not built a canal, and in selling its land it was taking steps to wind up the business, the loan did not further the specific purposes for which the corporation was created, thus excluding the power to loan from being deemed an implied power.[10] Three judges dissented on the ground that the loan was

[5] Western Ins. Co. v. Murphy, *supra* (note 3).

[6] Louisville Ry. Co. v. Louisville Trust Co., 174 U. S. 552 (1899).

[7] Strickland v. National Salt Co., 79 N. J. Equity 188 (1911).

[8] Mercantile Trust Co. of Ill. v. Kaster, 112 N. E. 988 (Ill. 1916).

[9] Calumet and Chicago Canal and Dock Co. v. Conkling, 112 N. E. 982 (Ill. 1916).

[10] North Ave. Building and Loan Ass'n v. Huber, 110 N. E. 312 (Ill. 1915).

valid, since adapted to promote lawful corporate purposes, and even if the act were held *ultra vires,* that defense could not be invoked to work an injustice.[11]

It will readily be seen that the canal company was deprived of its property and of any remedy to recover the extent of the loan, and it is submitted that the force of the dissenting opinion is set forth in the language of the New York Court of Appeals, "That kind of plunder which holds on to the property but pleads the doctrine of *ultra vires* against the obligation to pay for it, has no recognition or support in the law of this state.[12] Although the Federal courts are in accord with the doctrine of denying an action upon the *ultra vires* act, they permit a restitution to *status quo,* the party receiving the benefit being compelled to return the value of the property received albeit for an unauthorized purpose."[13] This view was followed in the jurisdiction of our principal case, the court saying "Where a contract is *ultra vires,* and a corporation has received money under it which in equity and good conscience belongs to another and which it ought to pay over, it is liable for it in an action for money had and received, with interest after demand."[14] The court that laid down the Federal rule said about this right to recover, "To maintain such an action is not to affirm, but to disaffirm the unlawful contract."[15]

A stockholder may avoid the difficulties surrounding the commission of an act *ultra vires* by enjoining same, as shown in the case where the directors of a corporation organized to manufacture cotton, were enjoined from paying insurance premiums on the life of the president of the concern,[16] likewise a stockholder may invoke the aid of a court of equity to enforce a statutory right accruing to a dissenting stockholder, upon stockholders voting to amend a concern's corporate purposes, the contemplated acts being beyond the granted powers of the corporation. But where all the stockholders have consented to the borrowing of money for a wrongful purpose, *viz.,* to pay debt of a corporation in which it had no interest and the execution of a mortgage to secure it, the corporation was held liable as the aggregation of its stockholders.[18] It will be noted that this is the class of case adverted to in this article as being *"ultra vires* with reference to some specific purpose when the corporation can not perform it for that purpose," and that the corporation was estopped from asserting the defence, it having received a valuable

[11] Leslie v. Lorillard, 110 N. Y. 519 (1888).

[12] Seymour v. Spring Forest Ass'n, 144 N. Y. 333 (1895). Cook on Corporations, Vol. 3, Sec. 681, 7th Ed.

[13] Central Transp. Co. v. Pullman, 139 U. S. 24 (1890).

[14] Lehigh v. Brake Beam Co., 205 Ill. 147 (1903).

[15] Transp. Co. v. Pullman, *supra* (note 13).

[16] Victor v. Cotton Mills, 61 S. E. 648 (N. C. 1908).

[17] Teele v. Rockport Granite Co., 112 N. E. 497 (Mass. 1917).

[18] Taylor Feed Pen v. Taylor Nat'l Bank, 181 S. W. 535 (Texas 1915).

consideration for the execution of the note and mortgage and not having tendered back same. In this case, the right to borrow money was properly held an implied power of the private trading corporation. Some courts, however, carry the doctrine of implied powers very far, holding any lawful act done by the accredited officers with a view to serving corporate ends, not prohibited by charter, *ultra vires*.[19] This view was specifically applied to a subscription to a fund for locating new industries in a city by a brewing concern having its factory and principal place of business therein, the corporation being compelled to pay its subscription.[20] It is submitted that this attitude, though getting away from the strict construction of corporate powers laid down in the Calumet Dock Co. case, is, after all, the better view, since tending to obviate difficulties and injustice resulting from a holding that such an act were *ultra vires*.

C. B. W.

DAMAGES—MEASURE IN CONTRACT ACTIONS—In an action for damages for a breach of contract, it may be laid down as a fundamental principle of the American and English systems of law that the basis of recovery is compensation for the loss suffered by the plaintiff.[1] This basis, however, is subject to two qualifications: the loss must come as a natural consequence of the breach—or be in the contemplation of the parties when the contract was formed[2]—and must be capable of reasonably certain proof, both as to amount and cause.[3] With these principles in existence the courts have possessed a comparatively sure rule for the measure of damages in contract actions; and with such a *modus operandi* have attained a greater uniformtiy in its application to particular circumstances than would have been possible had the matter rested entirely in the discretion of either the judge or the jury. This was one of the difficulties of the early English courts,[4] when the Anglo-Saxon system was in use—there was no certain rule, and it was even variable as to whether the matter of compensation was wholly in the hands of the judge or the jury. So, too, the civil law is open to the same criticism.[5] The damages rest in the discretion of the court, and each case must be decided solely on its own facts.[6]

[19] Winterfield v. Brewing Co., 71 N. W. 101 (Wis. 1897).

[20] Huntingdon Brewing Co. v. McGrew, 112 N. E. 534 (Ind. 1916).

[1] 1 Sedgwick, Damages (8th Ed.), p. 29.

[2] Hadley v. Baxendale, 9 Exch. 341 (Eng. 1854).

[3] 1 Sedgwick, Damages (8th Ed.), p. 245.

[4] *Ibid.*, p. 20.

[5] *Ibid.*, p. 25 ff., citing Domat, Loix Civiles; and Pothier, Traite des Obl.

[6] It would appear that in Scotland, profits may be recovered on much the same theory as in the civil law—the jury looks at all the circumstances.